

Supplemental Letter of Findings Number: 09-0566
Sales Tax
For Tax Years 2006-07

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ISSUE

I. Sales Tax—Recreational Vehicles.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-39; IC § 6-8.1-5-1; Commissioner's Directive 25 (July 2004).

Taxpayer protests the imposition of sales tax on the sale of recreational vehicles.

STATEMENT OF FACTS

Taxpayer is a corporation doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer for sales and use taxes for the years 2006 and 2007. The Department conducted an administrative hearing, wrote, and issued a Letter of Findings which addressed several issues which Taxpayer had protested. Taxpayer requested a rehearing to address one issue which the Department denied in the initial Letter of Findings. The Department determined that Taxpayer had failed to properly collect sales tax on certain sales of recreational vehicles to out-of-state purchasers for the tax years at issue. Taxpayer protests that it was not required to collect sales tax on the sales of these recreational vehicles. The Department conducted an administrative rehearing and this Supplemental Letter of Findings results. Further facts will be supplied as required.

I. Sales Tax—Recreational Vehicles.

Taxpayer protests the imposition of sales taxes on the sale of recreational vehicles to out-of-state customers for the years 2006-07. Taxpayer states that it met all requirements in the course of selling the recreational vehicles and collected and remitted all sales tax which was due. The initial Letter of Findings denied Taxpayer's protest on this issue. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

(Emphasis added.)

In its determination to deny Taxpayer on the issue of collection of sales tax on the sale of recreational vehicles, the Department referred to IC § 6-2.5-5-39, which explains that sales tax is due when an Indiana retailer sells a recreational vehicle to an out-of-state customer who lives in nine states, Canada, and Mexico, with whom Indiana does not have a reciprocal agreement. The Department reviewed the documentation and found that the sales at issue had indeed been to customers who lived in these areas.

Taxpayer protests that this is not the correct analysis. Taxpayer protests that, while the sales were made to customers who lived in those areas, the sales happened outside Indiana's borders. Prior to July 1, 2004, Indiana had an exemption for the sale of motor vehicles which were to be immediately transported to a destination outside of Indiana. The statute providing this exemption, IC § 6-2.5-5-15, was repealed as of July 1, 2004. Also on July 1, 2004, sales tax exemption certificate ST-137 was eliminated and was no longer an effective document for claiming an exemption from sales tax for out-of-state purchasers of motor vehicles to be titled or registered outside of Indiana, as explained by Commissioner's Directive 25 (July 2004). Commissioner's Directive 25 (2004) also explains in relevant part:

The repeal of [IC 6-2.5-5-15](#) only affects situations where the purchaser takes possession of the vehicle prior to taking the vehicle out of state.

This repeal does not affect out of state sales by Indiana dealers. For a sale of a vehicle to be considered out of state, the purchaser must take possession via delivery outside of Indiana. No exemption certificate is required when making an out of state sale. However, the sales contract must specify that the vehicle is to be delivered out of state and the dealer must maintain shipping documentation to verify that the vehicle was delivered to the purchaser at a specific out of state location.

(Emphasis added.)

Taxpayer protests that it did maintain shipping documentation which verified that the vehicles were delivered to the purchasers at specific out-of-state locations. In the course of the protest process, Taxpayer provided documentation which established that the vehicles were in fact delivered at a specific out-of-state address. Therefore, Taxpayer has provided documentation establishing that it met the requirements provided in

Commissioner's Directive 25 (July 2004), and has therefore met its burden under IC § 6-8.1-5-1(c).

In conclusion, Taxpayer is sustained on its protest of the imposition of sales tax on recreational vehicles which were delivered to a specific address in another state. The Department will conduct a supplemental audit to reflect these findings.

FINDING

Taxpayer's protest is sustained.

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